

- (2) Whether claimant gave timely notice of the alleged injury, and if not, whether respondent was prejudiced by this lack of notice.
- (3) Whether claimant submitted timely written claim.
- (4) Whether the deposition of Dr. Ernest Schlachter can be included in the record for purpose of appeal to the Workers Compensation Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds:

- (1) Claimant has failed in her burden of proving an injury arising out of and in the course of her employment with Mid Kansas Therapy Services as it relates to her carpal tunnel syndrome.

Claimant suffered an injury to her cervical spine in June 1992 while doing situps at home. Subsequent to this injury claimant sought medical treatment through her health insurance carrier. For the next several months claimant received the treatment for complaints for her cervical spine, her bilateral shoulders and arms, and for numbness and tingling in the fingers of her left hand. These symptoms all began subsequent to the non-work related injury in the summer of 1992. An MRI performed on claimant at that time diagnosed a bulging disc at C5-C6.

During the course of treatment, claimant discussed the possibility of surgery with her treating physician. Subsequent to this discussion, claimant contacted Darci Needham, the office manager for the respondent, regarding the expected cost of this surgery. When asked on more than one occasion of the work-related nature of this injury, claimant was unable to provide any specifics to Ms. Needham.

The record contains an extensive review of claimant's job duties none of which involve repetitive use of the upper extremities.

The claimant was unable to testify as to when the alleged work-related aggravation to her hands and wrists began and was further unable to state specifically whether she had informed the doctors of this alleged work relationship.

Medical records, including insurance forms, submitted to Dr. Ozanne and Dr. Becker indicated claimant's problems were not related to her employment. The first indication to the respondent that claimant was alleging a work-related connection between her employment and her physical complaints was a June 23, 1993, telephone call to Darci Needham.

K.S.A. 44-501(a) states in part:

"In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends."

K.S.A. 44-508(g) defines burden of proof as follows:

“Burden of proof’ means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party’s position on an issue is more probably true than not true on the basis of the whole record.”

Burden of proof is upon the claimant to establish his right to an award for compensation by proving all the various conditions on which her right to a recovery depends. This must be established by a preponderance of the credible evidence. Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

It is the function of the trier of fact to decide which testimony is more accurate and/or credible and to adjust the medical testimony along with the testimony of the claimant and any other testimony that may be relevant to the question of disability. The trier of fact is not bound by medical evidence presented in the case and has a responsibility of making its own determination. Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 817 P.2d 212 (1991).

The phrase “out of” the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises “out of” employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises “out of” employment if it arises out of the nature, conditions, obligations and incidents of the employment. Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973),

The phrase “in the course of” employment relates to the time, place and circumstances under which the accident occurred and it means the injury happened while the workman was at work in his employer’s service. Hormann v. New Hampshire Ins. Co., 236 Kan. 190, 689 P.2d 837 (1984).

“It has frequently been said that the purpose of the workmen’s compensation act is to burden the industry with the economic loss to a workman, or his dependents, resulting from accidental injury sustained by the workman, not only in the course of his employment, but which was caused by, or arose out of, his employment. It was not the purpose of the workmen’s compensation act that the employer should in all respects be an insurer of the employee. The employer is an insurer only for those accidental injuries caused or produced in some way by the employment. A showing of some causal connection between the employment and the accident is required.” Madison v. Key Work Clothes, 182 Kan. 186, 318 P.2d 991 (1957).

While Madison dealt primarily with a coming and going situation, the rationale of the Supreme Court is consistent with the Appeals Board’s holding in this matter.

Claimant must show some causal connection between her carpal tunnel syndrome and her employment with Mid Kansas Therapy Services. The Appeals Board finds claimant has failed in her burden of showing this required connection.

As the Appeals Board has found claimant’s carpal tunnel syndrome did not arise out of and in the course of her employment, the additional issues listed in this matter are rendered moot.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that claimant has failed in her burden of proving entitlement to medical care for her pre-existing carpal tunnel syndrome and has further failed in showing her carpal tunnel syndrome was aggravated by her employment with respondent. The Order of Administrative Law Judge Shannon S. Krysl, dated March 10, 1994, finding claimant to be entitled to medical treatment for the carpal tunnel syndrome, granting payment of Dr. Abay's medical as authorized medical, ordering reimbursement to claimant for medical records from Wesley Medical Center and finding that claimant's pre-existing carpal tunnel syndrome was aggravated by her work duties, is herein reversed. The remaining findings in Judge Krysl's Order of March 10, 1994, finding claimant's neck condition to be non-compensable, are affirmed.

IT IS SO ORDERED.

Dated this ____ day of July, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Lawrence M. Gurney, 1861 N. Rock Road, Suite 320, Wichita, KS 67206
Kim R. Martens, 200 W. Douglas, Suite 630, Wichita, KS 67202
Shannon S. Krysl, Administrative Law Judge
George Gomez, Director